

Citizen Advisory Group on Ethics in Government



FINAL REPORT

**Presented to
Governor Phil Bredesen**

September 29, 2005

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The Honorable Phil Bredesen
State Capitol Building
Nashville, TN 37243-0001

Dear Governor Bredesen:

We are pleased to present the report of your Citizen Advisory Group on Ethics in Government.

The 13 members of the group met formally on six occasions. We heard from nationally recognized experts on specific topics and we considered documentation of the best practices of state governments around the country. We also heard from citizens who came to our meetings in Nashville, Knoxville, Memphis, Chattanooga, Blountville and Lebanon. At each of those hearings, various members of the General Assembly also attended and shared their perspectives with us.

Our report is in three parts:

1. A general statement on the ethical values that we believe should underlie the standards and actions of anyone in state government;
2. A preamble on ethics today, putting current issues in a broader context;
3. Our specific recommendations, which we believe warrant action through legislation or executive orders.

The members of the Advisory Group are grateful for the honor of serving our state in this capacity. We hope that our recommendations help create a new climate in Tennessee state government, with new standards and actions that build confidence and trust among all citizens.

Respectfully,



W.J. Michael Cody
Co-Chair



Ben Atchley
Co-Chair

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Ethical Values of Government Service

It is an honor to serve the State of Tennessee. To live up to that honor requires the highest standards of ethical conduct, standards that go well beyond the minimum standards of specific laws and rules.

The people of Tennessee are both the employers and clients of state government. They are the source of all power, but they are also subject to the powers of the state. As a result, an effective state government at all levels depends on public trust and confidence, qualities that in turn depend on these principles:

Honesty — Personal integrity is the clearest expectation of public servants. Public officials should not use their public offices for personal gain. Private actions should match public appearances.

Professionalism — Official integrity should rest on a conscientious judgment of public interest, regardless of the power, attraction or proximity of more limited interests and influences. Actions should be demonstrably fair and impartial to all concerned.

Openness — Secrecy in government destroys public confidence. Freely available information, with the means for all persons to obtain it easily, serves as an effective constraint on personal temptation, conflicts of interest and unequal power.

Accessibility — Government should be available to all citizens on an equal basis. Unequal resources should not determine unequal outcomes, and the power and policies of the state should not be skewed by the financial weight of those affected.

Accountability — Ethical standards should be quantifiable and verifiable, and the state should have both the structures and the means to measure adherence. When actions fall short of those standards, enforcement, punishment and correction should be quick and certain.

A commitment to adhere to those principles should make any member of Tennessee's state government proud of his or her position. Proven adherence to those principles should make citizens of Tennessee proud of those who represent them at all levels of state government. Achieving that end requires constant attention and training, but the result of success is a government constantly worthy of its citizens' trust.

Ethics in State Government Today

The work of the Citizen Advisory Group on Ethics in Government began in the shadow of criminal indictments, convictions and guilty pleas of state officials and other persons in our recent history. No new rules or laws were required for those actions to be counted as crimes.

There is a wider context at work, however. Many citizens of Tennessee are deeply cynical about government itself, disparaging the actions and motives of public officials.

We believe that the vast majority of Tennessee government officials are honest people. The public view, however, considers ethical behavior as something far more substantial than merely being honest and avoiding visible ethical lapses.

We are all proud to be part of a democracy in which each person has one vote, but there is no such equality in the resources thrown into election campaigns or in the influence of special interests in the governmental process. Financial campaign support clearly distorts accessibility by the public. The personal presence of paid persuaders clearly distorts the process in favor of those who can pay for the extra help.

We are not in a place to undo those inequalities. With so much at stake, we do not naively declare that money and influence should somehow disappear. What we propose instead is a series of recommendations to do three things:

1. **Set new limits** — There are some ways to restrict or mitigate the power of money and influence. Many of these restrictions are already standing practice in other states.
2. **Enhance disclosure** — If modern government cannot undo the power of money and influence, it can at least make clear to its citizens in a timely manner where that power lies — who is spending or giving how much money, for what purposes, in affecting public policy. New technology can make this information more and more accessible.
3. **Tighten enforcement** — Here the key is clear. Only an independent ethics commission of bi-partisan, non-political citizens has the chance to restore the public's trust.

Three related aspects merit additional consideration. As the panel has traveled the state and listened to Tennesseans and stakeholders of the government process, we conclude that the issues surrounding legislative compensation, legislative staffing and a more open form of government need further analysis and study. We advise the Governor and leadership of the General Assembly to determine if there should be further recommendations regarding these three areas.

There is evidence that states with the tightest rules on lobbying, campaign finance and conflicts of interest, and the strictest, most independent enforcement of those rules, do achieve higher ethical performance in their public officials. Not surprisingly, citizens of those states think more highly of their state government. In fact, they are proud of the rules, the process and the performance. As a result, they look up to those in state government.

We should strive to create a state government in Tennessee in which citizens have the utmost trust in the political process and in state officials and public servants.

Improvement is an ongoing process. Even if every recommendation we make were passed into law, the subject would warrant review again in just a few years.

Circumstances change, and the governing rules must change accordingly. We have not considered some topics, such as public campaign financing, that seemed too big for our timeframe. Other topics, such as the apparent culture of undue lobbying influences, require a broader approach. No set of rules can cover every possibility, and all rules in this arena need to be revisited on a regular basis.

We believe that approval of something close to the list of recommendations in the next section of this report would begin to improve the ethical climate of state government. We have listed those recommendations in general, non-statutory language, and legislation would have to provide the details. Care would have to be taken to ensure that the legislation supports the general principle, without backdoor exits to weaken enforcement.

The recommendations would not solve all ethical problems in state government. We know that. Nevertheless, they would be a start. We should not accept our below-average status on ethics in state government. The present level seems totally unacceptable, to us and to our fellow citizens. Tennessee deserves better.

Recommendations

The Governor's Citizen Advisory Group on Ethics in Government endorses the following policies and practices as the basis for comprehensive legislation to improve the ethical standards of Tennessee government.

I. CAMPAIGN FINANCE – Public confidence in the funding of political campaigns requires strict regulation and full information.

A. Cash Contributions

- Ban all cash contributions.

B. Campaign Contributor Information

- Require employer and occupation information for all contributors and make those items part of the publicly available information.

C. Campaign Disclosure Timing and Frequency

- Time public reports to provide the most helpful information at the most appropriate times. Require candidates to report more frequently on the campaign contributions they receive during non-election years, and require candidates to file reports just before and just after the early voting period.
- Allow for Internet posting of candidate reports for better public access, and emphasize new technology to allow public to access information instantly and navigate through the information with ease.

D. Contribution Limits

- Tighten the limits on campaign contributions to individuals, political action committees and party organizations, and tighten the limits on how much each of those may redistribute, so that no source of campaign funds enjoys the opportunity for disproportionate influence.

II. DISCLOSURE REQUIREMENTS – Anyone with a role in the processes of state government should be open about his or her activities and support. The information necessary to understand those roles should be easily accessible and understandable to the public. All reports should be available promptly on the Internet.

A. Public Access

- Require that reports on travel expenditures by legislators and executive branch officials, including travel in state-operated vehicles, be available to the public.
- Post all legislative votes, including committee votes, in a timely manner.

B. Grassroots/Issue Organizations

- Impose stringent reporting requirements on campaign committees, including Section 527 issue committees that are set up under federal law but involve themselves in state-level races.
- If any organization spends over a certain threshold and specifically mentions contacting the legislature or administration on behalf of a public policy issue, that organization should be subject to full disclosure requirements.

C. Lobbyist Disclosure

- Require lobbyists to file a report naming all family members who work in state government.
- Require all lobbyists for state government agencies and departments now exempt from lobbyist registration and reporting requirements to file reports on the extent of their activities funded by taxpayers.
- Require lobbyists to disclose payments to them for lobbying activities and by category how those funds are spent in support of lobbying, on a monthly or more frequent basis.
- Require employers or principals of lobbyists to file spending reports detailing payments to lobbyists and payments in support of lobbying activity by themselves or others for them.
- Provide the ability to quickly crosscheck disclosure reports of lobbyists and their employers.

D. Official Disclosures

- Require that the statements of interest that each member of the General Assembly, each Constitutional Officer and each Executive Service employee files with the Registry be made available online.
 - Make expense reports for those three categories of officials available online.
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III. LOBBYING ACTIVITIES – Lobbyists are involved in the public’s business, and as such must accept limitations on their practices and visibility into their business arrangements.

A. Gifts to state officials

- Prohibit offers or expenditures for meals, travel, entertainment and gifts to state officials, and prohibit acceptance of such items by state officials.

B. Revolving Door Policy

- Provide a “cooling off period” for leading public officials (legislators, constitutional officers and senior Executive Service employees) by prohibiting them from lobbying state government for at least one year after they leave state employment. Restrictions should be even greater on matters in which an official personally and substantially participated or for which he or she had official responsibility.

C. Contingent Fees

- Ban lobbying fees contingent in part or in whole on passage or non-passage of particular legislation or the awarding of state contracts.
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IV. CONFLICTS OF INTEREST – The key principle is simple: Public officials should not use their public offices for personal gain. They should seek to avoid even the appearance that personal interests unduly influence their public decisions.

- Members of the General Assembly and Executive and Legislative employees should not take any official action nor participate in deliberation in a matter in which the official’s action could reasonably be expected or perceived to produce a substantial benefit for the official or a member of his immediate family.
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- Legislators should be disqualified from voting on or assisting with any issue on which a spouse or immediate family member has lobbied any member of the General Assembly. Members of the Executive Branch should not participate in deliberations on any issue on which a spouse or immediate family member has lobbied state officials.
- Executive Service employees should disclose all sources of income greater than \$200.

V. ENFORCEMENT – The process should be quick and decisive. Statutes and rules on ethical issues should emphasize requirements that are quantifiable and verifiable. There is a widely accepted body of “best practices” rules and procedures. Tennessee should be among the best of states with those high standards.

A. Oversight and Monitoring Mechanism

- Create an independent State Ethics Commission. The Commission should establish ethical standards for service in state government. As much as possible within constitutional constraints, this Code of Conduct should apply broadly and in closely matched language to the Legislative and Executive branches of state government, and those who do business with the state. The Commission should administer and enforce the Code of Conduct applicable to the General Assembly, Constitutional Officers and Executive Service employees.
- The Commission should have sufficient staffing and funding. It should be bipartisan, non-political and independent of any single branch of government. The commissioners should not hold any other state office or state employment.
- Vest strong powers in the independent commission. The Ethics Commission may begin an investigation with a formal request signed by an individual or at the initiation of the Commission itself. It should have the authority to perform routine ethics audits and issue subpoenas at its own initiative.
- The Ethics Commission should also have the authority to issue advisory opinions to public officials seeking advice regarding prospective ethics problems. The Commission should also have the authority to impose civil penalties for non-compliance and ethics violations.

- The Ethics Commission should be staffed with a full-time training officer charged with the responsibility of creating and coordinating ethics training programs for state employees.

B. Consequences and Penalties

- Authorize strong civil penalties for violations of ethical standards.
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VI. MISCELLANEOUS

- Ethics reform is a constantly evolving process and therefore requires periodic revaluation.
- Lobbyists and public officials, including legislators and supervisory personnel of the Executive Branch, should attend regular continuing education courses on ethics.
- Lobbyists should not serve on state boards and commissions involving any conflict of interest.
- Clarify laws that prohibit the “personal use” of campaign funds.